UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.164
18 November 1993

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 164th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 15 November 1993, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Second periodic report of Ecuador

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.164/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.93-85551 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Ecuador (CAT/C/20/Add.1)

1. At the invitation of the Chairman, Mr. Pinoargote, Mr. Riofrío and Mr. Anda (Ecuador) took seats at the Committee table.

2. Mr. PINOARGOTE (Ecuador), introducing his country's second periodic report (CAT/C/20/Add.1), said that Ecuador was committed to the promotion of and respect for human rights. However, there had been isolated incidents in which human rights had been disregarded. The Government was making every effort to adopt administrative measures and introduce amendments to national legislation to ensure that legal and other instruments reflected the commitments entered into under international agreements.

3. The report provided an update on information contained in the previous reports (CAT/C/7/Add.7, 11 and 13). It placed particular emphasis on Ecuador's democratic credentials. Of particular note was the Memorandum of Understanding mentioned in paragraph 8, the purpose of which was the preparation of draft texts of the Penal Code, the Code on the Enforcement of Sentences, the Code of Civil Procedure and the Act on the Organization of the Public Prosecutor's Office and the Judicial Police, as well as research on the informal settlement of disputes.

4. Also of interest to the Committee was the agreement on the implementation of a human rights education programme for the armed forces, which had been signed on 12 October 1993 by the Ministry of Foreign Affairs, the Ministry of Defence, the Secretary-General of the Latin American Association for Human Rights (ALDHU) and the representative of the United Nations Development Programme (UNDP) in Ecuador. Education programmes would be provided for high-ranking personnel of the three branches of the armed forces, starting with a seminar. Some 1,200 officers, 3,000 troops, 1,000 civilian members of the staff of the 16 army units and 1,000 cadets attending the military school and college would take part in educational activities. The population of Ecuador would benefit indirectly as a result of the armed forces' greater respect for human rights and commitment to democratic principles. The immediate aims of the agreement were not only to provide training and a forum for discussion, but also to open up discussion between the armed forces and society at large. The subject of human rights and respect for democracy would ultimately form part of the courses and training provided for military personnel.

5. Mr. LORENZO (Country Rapporteur) thanked the representative of Ecuador for the report (CAT/C/20/Add.1) and his oral introduction. Ecuador had indeed made a great effort to improve its human rights record. It was also to the Government's credit that it had admitted that isolated cases of human rights abuse had taken place and that steps had been taken to rectify the situation.

6. Paragraph 4 of the report mentioned police courts, but did not include information on which branch of the Government they belonged to, their

composition or their competence. It did not say whether they could order detention or pre-trial detention. The previous reports of Ecuador seemed to indicate that three kinds of courts were in operation: civil, police and military. However, the report under consideration did not mention or provide clarification of their role and jurisdiction.

7. Paragraph 6 implied that the Code of Criminal Procedure had established a system under which crimes were investigated. In practice, however, it seemed that an extra-legal regime existed alongside that system. Was there any truth in that assumption? He would also like details of the procedures followed once a person had been charged with an offence, which authorities carried out the investigation, who ordered the detention and for how long, how much time elapsed between an arrest and the accused being brought before an independent judge, how long a detainee was kept incommunicado, the procedure for access to a lawyer of his choice, medical examinations and visits by family members.

8. Paragraph 9 stated that a new Penal Code was being prepared. How long would it be before it had been completed and implemented?

9. In paragraph 13, the details on the power of prison directors to order the release of a prisoner if the courts had not done so within the prescribed time limit were a surprising but welcome introduction to Ecuador's legal instruments. However, such power could be regarded as undermining the competence of the judiciary and seemed to imply that the judiciary was not operating as it should.

10. He asked what stage had been reached in the preparation of reforms to the Code of Criminal Procedure. Paragraphs 14 to 18 seemed to express the hopes of the author of the report rather than the reality of the situation in Ecuador. That comment also seemed to apply to the situation of the Judicial Police referred to in paragraphs 35 to 37. The report did not say who would carry out investigations or what degree of autonomy the Judicial Police would enjoy in relation to the Public Prosecutor's Office and the courts.

11. Paragraph 34 stated that, following the dissolution of the Criminal Investigation Service and its replacement by the Crime Investigation Office, the conduct of the police towards detainees had improved. However, reports by Amnesty International, the World Organization against Torture and the Ecumenical Commission on Human Rights (CEDHU) alleged that the improvements had been only temporary. In view of the allegations of torture and ill-treatment which had been made against the Crime Investigation Office and during police investigations, was a systematic review of interrogation rules, instructions, methods and practices carried out in accordance with article 11 of the Convention?

12. Paragraph 39 referred to amendments to the legislation governing the Public Prosecutor's Office. He asked what the present functions of the Office were, how they would change and, in particular, what its competence would be in cases of alleged torture or ill-treatment. Could allegations of torture and ill-treatment by the police be reported directly to the courts or to the Public Prosecutor's Office at present?

13. The report did not provide detailed information on how the provisions of the Convention were being implemented and was not in conformity with the general guidelines regarding the form and contents of periodic reports (CAT/C/14). He particularly wished to know whether all aspects of torture as defined in article 1 of the Convention had been fully incorporated into criminal law as it stood at present or into the amendments which would be made to it. The report emphasized legislative measures to prevent acts of torture, but did not include details on administrative, judicial and other measures. In connection with article 10 of the Convention, the only information provided was on training for military personnel. Under that article 10, however, training should also be provided for law enforcement personnel, medical personnel and public officials.

14. Concerning articles 12 and 13, he asked what the results of complaints of alleged torture had been; it would appear that there had not been any serious investigations in such cases.

15. The Government of Ecuador did not seem to have followed up on the recommendations made by the Committee against Torture on 12 November 1991 and, in particular, on the suggestion that all matters of detention should be placed within the purview of the judiciary. Questions of habeas corpus were also still handled by the municipal authorities, not by independent judges. He pointed out that all cases entailing deprivation of liberty must come within the competence of the courts; it was inappropriate that judges were not considered part of an independent judiciary, but of the executive power.

16. He asked the delegation of Ecuador whether it had received a copy of the documents submitted by Amnesty International, the Ecumenical Commission on Human Rights and the World Organization against Torture.

17. Mr. PINOARGOTE (Ecuador) said that his delegation had received only the document submitted by Amnesty International.

18. Mr. LORENZO (Country Rapporteur) requested the secretariat to provide the delegation of Ecuador with a copy of the other two documents.

19. According to Amnesty International, torture continued to be carried out by members of the Crime Investigation Office (OID), the Special Operations Group (GOE) and the Intervention and Rescue Group (GIR) and ill-treatment continued in García Moreno Prison in Quito. Amnesty International further maintained that the legal limit of 48 hours for detention was not respected, some detainees having been held as long as seven days, and that persons who had committed torture and other forms of ill-treatment enjoyed impunity. A number of cases of detention for political reasons were also cited.

20. The report of the Ecumenical Commission on Human Rights (CEDHU) listed various cases of alleged torture, all of them said to have been committed in 1993 in one prison by members of the Crime Investigation Office. The report described the murders allegedly perpetrated by security forces in 1993 and a visit by the Chairman of the Ecuadorian Commission on Human Rights, the President of the Court of Constitutional Guarantees and the President of the Ecumenical Commission on Human Rights to the Crime Investigation Office in

Quito, during which the above persons had seen a room containing instruments of torture and exactly fitting the descriptions given by torture victims.

21. The World Organization against Torture had also submitted a report containing allegations of several cases of torture.

22. He requested the delegation of Ecuador to comment on the allegations contained in the reports submitted by Amnesty International, the Ecumenical Council on Human Rights and the World Organization against Torture.

23. Mr. EL ABRASHI (Alternate Country Rapporteur) joined Mr. Lorenzo in thanking the delegation of Ecuador for its report and oral introduction.

24. In accordance with article 1 of the Convention, it would be preferable for Ecuadorian legislation to contain a specific definition of torture. Inasmuch as criminal legislation was currently under review in Ecuador, it might be a good time to consider incorporating such a definition.

25. Concerning the relationship between the Convention and domestic law, previous reports had stated that, once ratified, the Convention became an integral part of domestic legislation and could be invoked in the courts. He inquired whether the Court of Constitutional Guarantees had ever had to judge the constitutionality of any of the articles of the Convention and, in particular, the article on extradition. What would happen if the Court ruled that the application of an article of the Convention was unconstitutional? He recalled that, according to paragraph 70 of the core document on Ecuador (HRI/CORE/1/Add.7), any international treaty found to be inconsistent with the Constitution was null and void.

26. The addendum to Ecuador's initial report (CAT/C/7/Add.13) referred to the setting up of an Ad Hoc Human Rights Committee (para. 43) and he wondered whether that body had undertaken to ensure the implementation of the Convention against Torture. The same document discussed the possibility of the declaration of a state of emergency (pp. 14-15) and pointed out that, in the face of two clear threats of destabilization - drug trafficking and the subversive movements which were particularly virulent in neighbouring countries - investigation procedures might, in order to keep the peace, have been carried to extremes; it was also possible that proper control had not been exercised over acts which had been sanctioned, but were being thoroughly investigated in order to prevent any recurrence (para. 52). Did that situation still exist and how did it affect the implementation of the Convention?

27. Paragraph 7 of the second periodic report referred to the need for amendments to the system of criminal justice and he asked how work was progressing on such changes and what guidelines were being used.

28. Paragraph 10 spoke of overcrowded prisons and of delays in sentencing. What action had been taken to remedy that situation?

29. Paragraph 12 cited exceptional cases for detaining persons accused of offences and he wished to know what the "harsher treatment" was to which reference was made.

30. Concerning paragraph 14, he requested clarification on the new system of rules governing criminal procedure and more information on the Judicial Police referred to in paragraph 15.

31. As to paragraph 17, how was the length of detention determined? A period of one year's detention or more seemed to be very long, particularly in view of the reference in that paragraph to the principle of proportionality.

32. With regard to paragraph 32, on what basis could pardons be granted by the National Congress and had any cases of torture been brought before it?

33. What was the scope of the powers of the Criminal Investigation Office referred to in paragraph 34, and how did they differ from those of its predecessor, the Criminal Investigation Service?

34. Focusing his attention on paragraph 36, he sought clarification on how the Judicial Police operated.

35. Concerning paragraph 39, he inquired how the Public Prosecutor's Office worked and how its activities related to those of the Judicial Police.

36. In conclusion, he joined Mr. Lorenzo in requesting the delegation of Ecuador to comment on the allegations made in the reports of Amnesty International, the Ecumenical Commission on Human Rights and the World Organization against Torture.

37. Mr. SORENSEN, having thanked the delegation of Ecuador for its report and oral introduction, requested it to provide information concerning complaints, inquiries, indictments, proceedings, sentences, reparation and compensation for acts of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with part I (b) (iii) of the general guidelines.

38. The statement in paragraph 19 of the report that persons unfairly convicted of torture or acquitted by dismissal of the proceedings could claim compensation for the days of detention served was inadequate. Article 14 of the Convention called for redress, compensation and rehabilitation for the victims of torture.

39. With regard to paragraph 32, he pointed out that the Vienna Declaration and Programme of Action contained an entire chapter on the problem of impunity.

40. While welcoming the efforts made to educate the military in Ecuador, he regretted the absence of any information on the training of doctors and health care personnel, as required under article 10 of the Convention. As many persons would be in need of rehabilitation in Ecuador, it was important to inform health care personnel about torture.

41. Lastly, he asked whether Ecuador had made a contribution to the United Nations Voluntary Fund for Victims of Torture. Even a small contribution would be a significant gesture, not only because the Fund needed the resources, but also because it would demonstrate that Ecuador recognized the problem and supported the rehabilitation of torture victims.

42. Mr. BURNS said he regretted that the core document (HRI/CORE/1/Add.7) did not contain any basic information on the population, ethnic make-up or natural resources of Ecuador.

43. He asked whether the scope of the crime of torture included mental torture, as required under the Convention; the penalties referred to seemed to relate only to physical torture.

44. He emphasized that any reference to the orders of a superior as a justification for acts of torture was clearly in breach of the Convention.

45. As to provisions governing pre-trial detention, the additional report (CAT/C/7/Add.11, p. 4) stipulated a maximum period of 24 hours, as opposed to 48 hours, as stated in the initial report (CAT/C/7/Add.7) and he wondered whether that reflected a change in legislation. He also wished to know whether persons held in pre-trial detention had the right of access to legal counsel.

46. There was some doubt about the status and responsibilities of the Judicial Police referred to in paragraph 35 of the second periodic report and about whether that body was to be answerable to the judiciary or to the National Police.

47. Mr. BEN AMMAR, referring to paragraph 51 (e) of the core document on Ecuador (HRI/CORE/1/Add.7), said that he would like some clarification of the status and accountability of the Sub-Secretariat of Justice and drew the Committee's attention to what appeared to be a possible violation of the principle of the separation of powers.

48. While the involvement of 38 non-governmental organizations in efforts to safeguard human rights in Ecuador was to be welcomed, there was also a need for a fully independent national institution for the protection of human rights, with its own budget and staff and full public coverage of its discussions. It was not clear from the report that such an institution yet existed.

49. Mr. MIKHAILOV noted that the second periodic report was closely related to the earlier reports, while reflecting some changes, in particular with regard to the new Code of Penal Procedure, the protection of minors and the monitoring of the judiciary. He welcomed the fact that some progress had been made and acknowledged that the pace of change should not be forced. However, certain questions still needed to be answered: what types of torture had been practised and what measures had been taken to eliminate them? What exactly was meant by the "restrictions" placed on claims referred to in paragraph 5? What sort of offences came under the definition of torture (para. 9) and what penalties were applicable? What legislation had been enacted, and what practical measures adopted, to provide compensation to victims?

50. The CHAIRMAN said that, while he agreed that changes could not necessarily be expected overnight, the report reflected a disappointing lack of real progress in bringing about legislative and administrative change and many of the criticisms which had been expressed on previous occasions remained valid. Referring to paragraphs 18 and 39, he asked whether giving the Public

Prosecutor's Office greater power in relation to courts was really likely to ensure the proper safeguarding of citizens' rights, especially now that several other countries had moved in the opposite direction.

51. It was not clear what sort of guarantees were being referred to in paragraph 29, or how they were incorporated into national legislation.

52. Referring to the fact that the National Police had, for the time being, retained responsibility for the Criminal Investigation Office (para. 34), he asked how long that temporary state of affairs would continue and noted the implication in that paragraph that police conduct still left something to be desired. He would also like more information on the Judicial Police Regulations referred to in paragraph 36 and on the factors which, according to the report, had prevented that body from becoming a fully fledged institution. With regard to the plans referred to in paragraph 37 to make laboratory services completely free of charge to the poorest citizens, he asked who bore those charges at present.

53. It was not clear that article 1 of the Convention was fully covered by national legislation, since the notion of mental torture appeared not to be included. Nor was it clear that a defence based on a plea of "superior orders" was ruled out. The report gave insufficient detail on legislation, if any existed, to implement article 3 of the Convention. There also appeared to be no specific legislative texts to implement the various technical provisions contained in articles 5 to 9 of the Convention.

54. He noted that, while provisions now existed to provide compensation to persons unfairly accused (para. 19), there was no mention in the report of any provisions to implement article 14 of the Convention by ensuring that victims of torture could obtain appropriate redress and compensation. Nor was there any provision for ensuring that statements made as a result of torture could not be used as evidence except against a person accused of committing torture (art. 15 of the Convention).

55. He would be interested to hear the views of the Ecuadorian delegation on the cases brought to light by various non-governmental organizations, and the results of any investigations which had been or would be conducted. The importance in terms of deterrence of swift and thorough investigations of allegations of torture and of obtaining the conviction of those responsible could not be exaggerated.

56. In conclusion, he emphasized the goodwill shown by the Ecuadorian authorities under the new democratic order and their evident resolve to combat torture. He encouraged them to continue their efforts and suggested that they might obtain valuable assistance from the advisory services of the Centre for Human Rights.

The public meeting rose at 11.45 a.m.